

How to Determine Who Should be Designated In a Conflict-of-Interest Code¹

Determining Who Makes or Participates in the Making of Governmental Decisions:



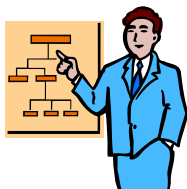
Making a governmental decision, means the person:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action; or
- (4) Enters into any contractual agreement on behalf of his or her agency.

Participating in the making of a decision, means the person:

- (1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or
- (2) Advises or makes recommendations to the decision-maker by conducting research or an investigation, preparing or presenting a report, analysis or opinion that requires the exercise of judgment on the part of the employee and the employee is attempting to influence the decision.

Who is a Designated Employee?



A designated employee is an officer, employee, member, or consultant of an agency whose position is designated in the code because the position entails the making or participation in the making of governmental decisions that may foreseeably have a material effect on any financial interest. (*Government Code Section 82019.*)

To determine who should be designated in the code, you need to know who within the agency makes or participates in the making of governmental decisions. (*FPPC Regulation 2 Cal. Code of Regs. Section 18701-18702.4.*)

Who Should Not be Designated?



The term “designated employee” does not include:

- Public officials specified in Government Code Section 87200
 - Elected state officers
 - Judges
 - Court Commissioners
 - Public Utilities Commission members
 - State Energy Resources Conservation and Development Commission members
 - California Coastal Commission members
 - Public officials who manage public investments
- Solely clerical, ministerial, or manual positions
- Unsalaries members of boards or commissions that are solely advisory

Checking Duty Statement and Job Description:



You can determine who should be designated in the code by first eliminating those positions outlined above that are not designated employees.

Next, evaluate the remaining employees, members, officers, or consultants of your agency. Top level management personnel are normally broad policy makers and should be designated. Beyond that, you need to look at each position to determine if it makes or participates in the making of governmental decisions. One way to accomplish this is by reviewing duty statements or job descriptions.

Some agencies rely on department supervisors to determine who, within their department, makes or participates in making decisions. This would be

¹ This information sheet should not be used to determine whether your agency is required to adopt a conflict-of-interest code. Contact the FPPC for assistance in making that determination.

acceptable provided you set out for the supervisor what it means to make or participate in the making of decisions, as set forth above.